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In the Supreme Court of the United States

OCTOBER TERM, 1989

OKLAHOMA NATURAL GAS COMPANY, PETITIONER

v.

WILLIAMS NATURAL GAS COMPANY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES AND THE FEDERAL ENERGY REGULATORY COMMISSION AS AMICI CURIAE

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QUESTIONS PRESENTED

The Federal Energy Regulatory Commission issued a certificate of public convenience and necessity to an interstate natural gas pipeline to construct and operate a pipeline in Oklahoma City, Oklahoma. Petitioner, a competing intrastate pipeline holding a state law franchise to service customers in Oklahoma City, unsuccessfully opposed the Commission's issuance of the certificate, and petitioned the D.C. Circuit for review of that decision. At the same time, petitioner obtained an Oklahoma state court injunction barring the interstate pipeline from exercising its rights under the certificate without first obtaining a franchise under Oklahoma law. The interstate pipeline filed this action in the United States District Court for the Western District of Oklahoma to enforce its rights under the Commission's certificate, and on appeal, the Tenth Circuit held that enforcement of the state court injunction should be enjoined.

The questions presented are:

1. Whether Section 19(b) of the Natural Gas Act, 15 U.S.C. 717r(b), which vests exclusive authority in the United States Court of Appeals "to affirm, modify, or set aside" orders of the Federal Energy Regulatory Commission on petitions for review by aggrieved parties, deprived the state court of jurisdiction to determine whether the interstate pipeline must comply with the state franchise law before exercising its rights under the Commission's certificate.

2. Whether the court of appeals correctly held that the district court should enjoin enforcement of the state court judgment barring the interstate pipeline from exercising its rights under the Commission's certificate.

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This submission responds to the Court's invitation to the Solicitor General to file a brief expressing the views of the United States.

STATEMENT

1. Section 1(b) of the Natural Gas Act (NGA), 15 U.S.C. 717(b), provides that the NGA, as administered by the Federal Energy Regulatory Commission, "shall apply to the transportation of natural gas in interstate commerce * * * but shall not apply to any other transportation * * * of natural gas or to the local distribution of natural gas." Under Section 7(c) of the NGA, 15 U.S.C. 717f(c), a natural gas company may not "engage in the transportation * * * of natural gas, subject to the jurisdiction of the Commission" nor "undertake the construction or extension of any facilities therefor

* * * unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations."

When a natural gas company applies for a certificate, other interested entities may intervene as parties to the proceeding before the Commission. See Section 7(c)(1)(B), 15 U.S.C. 717f(c)(1)(B); 18 C.F.R. 157.10, 385.214. If the Commission issues the certificate, the natural gas company "may acquire [rights-of-way and property needed to operate the certificated service] by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts." Section 7(h), 15 U.S.C. 717f(h). The certificate prohibits the natural gas company from "abandon[ing,]" *i.e.*, discontinuing, any certificated service or facilities without the Commission's authorization. See Section 7(b), 15 U.S.C. 717f(b).

Any party "aggrieved by an order issued by the Commission [under the NGA]" may obtain judicial review in a United States Court of Appeals by filing a "written petition praying that the order of the Commission be modified or set aside in whole or in part." Section 19(b), 15 U.S.C. 717r(b). Section 19(b) further provides that "[u]pon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part." *Ibid.*

2. In 1988, respondent PowerSmith Cogeneration Project, Limited Partnership, was building a cogeneration facility on the grounds of the Firestone Tire and Rubber plant in Oklahoma City, Oklahoma. PowerSmith needed a natural gas company to transport natural gas to its new facility. Petitioner, the local distribution company with a city franchise to sell, transport, and distribute gas

to the public in Oklahoma City,[1] and respondent Williams Natural Gas Company, an interstate "natural-gas company" subject to the jurisdiction of the Commission, competed for the PowerSmith contract. PowerSmith awarded the contract to Williams. In order to service PowerSmith, Williams needed to construct a twelve-mile pipeline from its nearby interstate facilities to PowerSmith's cogeneration plant. Pet. App. 2a-3a.

Petitioner, recognizing that Williams needed to obtain the Commission's approval before building the pipeline, filed a declaratory judgment action on October 18, 1988, against Williams in Oklahoma County District Court. In that state court action, petitioner sought an order declaring that Williams, by virtue of petitioner's franchise, "cannot * * * use any of Oklahoma City's streets * * * or other public rights of way for the purpose of laying pipelines * * * for the transmission of natural gas to [PowerSmith] without first obtaining a franchise from Oklahoma City." Pet. App. 85a.[2]

Ten days later, on October 28, 1988, Williams applied to the Commission for a certificate of public convenience and necessity, under Section 7(c) of the NGA, to build

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[1] Petitioner obtained the state law franchise in April 1985. Pet. App. 82a-83a. Under Oklahoma law, a municipality may award a franchise—which may not be granted, extended, or renewed for a longer term than 25 years—only after approval by "a majority of the qualified electors residing within its corporate limits." Okla. Const. art. 18, § 5(a). Franchises are not exclusive. Okla. Const. art. 18, § 7. Under state law, however, if a firm is serving a local community under a franchise, a competing firm in certain circumstances must obtain another franchise before entering the market. See *Oklahoma Gas & Elec. Co.* v. *Total Energy, Inc.*, 499 P.2d 917, 924 (Okla. 1972).

[2] Williams countered by contending that the relevance—if any—of the state law franchise requirement should be resolved in the federal certificate proceeding before the Commission, and that, in any event, state law did not require that it obtain a franchise under the circumstances. See Pet. App. 87a-92a.

and operate the PowerSmith pipeline. Petitioner opposed Williams' application and intervened in the Commission proceeding. Petitioner contended, among other claims,[3] that "the facilities proposed by [Williams] are subject to local rather than federal regulation [because] 'the proposal * * * in fact relates to service in the nature of distribution or intrastate transportation,'" Pet. App. 52a-53a, not to service in interstate commerce.

3. a. On February 16, 1989, the Commission granted Williams' application and issued a certificate to build and operate the PowerSmith pipeline. Pet. App. 45a-61a. The Commission specifically found, contrary to petitioner's principal contention, that

> the facilities proposed by [Williams] will involve an expansion of [Williams'] interstate pipeline system which is used to transport gas in interstate commerce. Accordingly, the facilities [Williams] proposes to construct in its application are subject to the Commission's jurisdiction and to the requirements of subsections (c) and (e) of section 7 of the NGA.

Id. at 55a. The certificate, among other things, authorized Williams to use Oklahoma City's streets, alleys, and other public rights of way in order to lay pipelines and install other equipment necessary for the transmission of natural gas.[4] The certificate further provided that the

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[3] In addition to asserting that Williams' proposed pipeline should not be subject to the Commission's jurisdiction, petitioner contended that it would provide a more advantageous service to consumers if allowed to service PowerSmith, and that Williams' certificate application was incomplete. See Joint Br. in Opp. App. 14a-17a.

[4] The certificate obligated Williams to continue operation of and service on the pipeline unless it received the Commission's prior approval, see 15 U.S.C. 717f(b), and vested Williams with the ability to exercise its delegated right of eminent domain, see 15 U.S.C. 717f(h). See p. 2, *supra*.

new facilities "shall be completed and placed in actual operation" by mid-August 1989. *Id.* at 61a.[5]

b. That same day, the Oklahoma County District Court issued an order holding that state law required Williams to obtain a franchise as a prerequisite to transporting gas to PowerSmith within Oklahoma City limits. Pet. App. 22a-25a. The state court, however, reserved ruling "on the issue whether federal law preempts the requirements of Williams obtaining a franchise from the City of Oklahoma City." *Id.* at 24a.

4. a. On March 28, 1989, Williams filed a condemnation action, under Section 7(h) of the NGA, against petitioner and respondent City of Oklahoma City in the United States District Court for the Western District of Oklahoma. Pet. App. 93a-99a. Pursuant to its FERC certificate, Williams sought to acquire, use, and immediately possess rights-of-way across the City's streets. *Id.* at 95a-97a. In addition, Williams sought to quiet title to the condemned property with respect to petitioner's assertion of competing state-law franchise rights. *Id.* at 97a-99a. Three weeks later, on April 18, 1989, the district court

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[5] On March 1, petitioner filed with the Commission a request for rehearing under Section 19 of the NGA, 15 U.S.C. 717r. Joint Br. in Opp. App. 19a-38a. Petitioner contended that

> [s]ince the proposed direct natural gas service by Williams to PowerSmith involves the "local distribution of natural gas," such distribution is beyond the regulatory jurisdiction of the Commission since Congress, under Section 1(b) of the NGA, reserved the same to the States.

Id. at 34a. And petitioner emphasized that "[t]he bypass of the existing utility [*i.e.*, petitioner], as proposed in this case, presents a situation of essentially local concern and vital interest to the State of Oklahoma." *Ibid.*

Petitioner also asked the Commission to defer a final decision on Williams' certificate application pending the resolution of petitioner's state court action since that "action goes directly to the interests of the citizens of Oklahoma City." Joint Br. in Opp. App. 38a.

granted Williams "immediate possession of the easements sought to be condemned." *Id.* at 34a.[6]

b. On May 19, 1989, the Oklahoma County District Court resolved the outstanding preemption issue, holding that "federal law does not pre-empt Oklahoma law under the facts presented in this case." Pet. App. 29a.[7] Accordingly, the state court permanently enjoined Williams from using "any of Oklahoma City's streets, alleys or other public rights-of-way for the purpose of laying pipeline and other equipment for the transport of natural gas and/or transport of natural gas in its existing pipelines that are currently using the public streets of Oklahoma City [to PowerSmith] without first obtaining a franchise from the voters of Oklahoma City." *Id.* at 30a.[8]

c. Williams promptly returned to federal court to obtain that court's authorization to operate "the pipeline on the condemned property and, if necessary, [an injunction of] the state court proceeding and enforcement of any orders issued therein to permit such operation." Pet. App. 40a-41a. On May 30, the federal district court denied relief, concluding that "it is barred from addressing the

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[6] According to the district court, petitioner and Williams had agreed that "entry of such order would permit the construction, but not the use, of the proposed pipeline." Pet. App. 31a. The latter would await the district court's disposition of Williams' remaining quiet-title claim. *Id.* at 31a-32a.

[7] In the meantime, the state court on April 28 had temporarily restrained Williams from constructing its pipeline. On May 1, the federal district court stayed that order as "an interference with [its] jurisdiction," thereby permitting Williams to continue to build the pipeline. Pet. App. 37a.

The federal court, noting that "[t]he issue of pre-emption having first been presented to the State court," stated that it would "not proceed to decide that issue in advance of the state court decision on the issue if that be made within a reasonable time." Pet. App. 37a.

[8] On July 18, 1989, Williams appealed the state court ruling to the Oklahoma Supreme Court. *Smith Cogeneration, Inc.* v. *Oklahoma Natural Gas Co.*, No. 73,649. That appeal remains pending.

question of pipeline operation by the *Rooker* doctrine." *Id.* at 41a (citing *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413 (1923) (federal court may not act as an appellate court for purpose of reviewing a state court judgment)).

d. On May 31, the Commission denied petitioner's request for rehearing of the certificate proceeding. Pet. App. 62a-74a. The Commission again rejected petitioner's request to defer its ruling pending disposition of the state court proceeding. As the Commission explained:

> [A] determination by the state court as to whether or not [Williams] requires authorization under the franchise law to install the pipeline in Oklahoma City has no bearing on our determination of whether the [proposed pipeline] is in the public convenience and necessity. Should the state court determine that [Williams] needs authorization under the franchise law, the issue will be whether or not that determination is preempted by our certificate authorization.

Id. at 72a.[9]

Under Section 19(b) of the NGA, petitioner filed in the D.C. Circuit a petition for review of the Commission's order issuing a certificate to Williams. *Oklahoma Natural Gas Co.* v. *FERC*, No. 89-1376 (argued Mar. 20, 1990).[10] That petition is currently pending.

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[9] The Commission noted the Oklahoma District Court's recent ruling that Williams was subject to the state franchise law and stated that "[i]t is our view that the state court's determination is erroneous." Pet. App. 65a n.5. The Commission explained that since "[t]he direct transportation service to be provided by [Williams] to PowerSmith * * * involves interstate transportation and at no point becomes local distribution," the Commission "has exclusive jurisdiction over the proposal." *Ibid.*

[10] On February 23, 1990, petitioner filed with that court a conditional motion for leave to file a supplemental brief on preemption issues if this Court denied certiorari. See Joint Supp. Br. in Opp. App. 1a-2a. The court of appeals denied that motion on March 16, explaining that "[h]ad the petitioner filed this motion in a timely manner following the Tenth Circuit's decision on November 22, 1989, the court might have considered enlarging the issues on review to

5. On Williams' appeal from the district court's refusal to enjoin enforcement of the state court order, the court of appeals reversed, holding that "the proceedings in the state court that resulted in the order enjoining Williams' exercise of rights granted in the FERC certificate constituted an impermissible collateral attack on a FERC order in contravention of § 19 of the NGA." Pet. App. 18a. Accordingly, the court concluded that the district court "erred in refusing to enjoin the enforcement of the state court injunction," *ibid.*, and therefore remanded the case for further proceedings, *id.* at 21a.[11]

a. The court of appeals noted that Section 19 of the NGA is the "statutorily provided means for contesting a FERC certificate," Pet. App. 9a, and that those "special judicial review provisions * * * are exclusive," *id.* at 10a. Relying on *City of Tacoma* v. *Taxpayers of Tacoma*, 357 U.S. 320 (1958), the court concluded that "a challenger may not collaterally attack the validity of a prior FERC order in a subsequent proceeding." Pet. App. 13a. Here, the court of appeals found that the state proceeding constituted such an attack because "the state court's consideration of the preemption issue [raised by petitioner in the declaratory judgment action] ultimately challenges FERC's determination of its own jurisdiction." Pet. App. 14a. Under Section 19 of the NGA, however, petitioner "could have and should have raised the preemption issue before FERC originally or upon its motion for rehearing." *Id.* at 17a.[12]

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include the preemption question, which appears to have been addressed by the Commission." *Id.* at 2a.

[11] The court of appeals later stayed issuance of the mandate pending disposition of the petition for a writ of certiorari. Pet. App. 79a-80a.

[12] The court declined to resolve the substantive issue whether the Natural Gas Act preempted application of the state franchise law to Williams' proposed pipeline. Pet. App. 8a-9a, 17a. That issue, if properly raised, would be resolved by the D.C. Circuit on the pend-

b. The court of appeals also determined that its conclusion was not at odds with the *Rooker* doctrine. Pet. App. 18a. In its view, "the state action crosse[d] the *Rooker* boundary," *id.* at 20a, "where, as here, a state court has erroneously taken appellate jurisdiction over issues that have been previously decided by a federal agency, or when review of those issues could have and should have been sought pursuant to the federal statutory scheme," *id.* at 21a.

DISCUSSION

Petitioner has sought to challenge its competitor's authority to build and operate a FERC-approved pipeline before three different judicial forums—the Oklahoma state courts, the Oklahoma federal courts, and the D.C. Circuit. And each case is currently winding its way through the respective appellate process. At bottom, however, each of petitioner's challenges has the same objective—to prevent Williams from operating its pipeline in accord with the FERC certificate. Such a challenge to the certificate necessarily entails the sort of relief available exclusively from the federal court of appeals reviewing the validity of the certificate under Section 19(b) of the NGA. In our view, the court of appeals properly construed Section 19(b), in light of *City of Tacoma* v. *Taxpayers of Tacoma*, 357 U.S. 320 (1958), as foreclosing petitioner's attempt to mount a collateral challenge in state court to the effectiveness of the FERC certificate.

The court of appeals therefore correctly concluded that the state court lacked jurisdiction to issue its injunctive decree. Even so, the court of appeals' ruling directing the district court to enjoin enforcement of the state court judgment raises questions under the Anti-Injunction Act, 28 U.S.C. 2283, and related doctrines. But in the un-

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ing petition for review of the FERC certificate. *Id.* at 17a; see p. 7, *supra*.

usual context of this case, we believe that the court of appeals' ruling is consistent with governing legal principles authorizing federal courts to issue injunctions in aid of their jurisdiction, and that there is no statutory or prudential bar to issuance of such an injunction. Accordingly, further review is not warranted.

1. a. The certificate issued by the Commission to Williams under Section 7(c) of the NGA required the firm to construct a pipeline within the corporate limits of Oklahoma City; to begin transporting gas through that pipeline by August 16, 1989; and to continue operations unless and until it received the Commission's approval to abandon service. Pet. App. 61a; see 15 U.S.C. 717f(b). And petitioner concedes (Pet. 14) that under Section 19(b) of the NGA, the courts of appeals have exclusive jurisdiction "to affirm, modify, or set aside" such Commission orders. See, *e.g.*, *FPC* v. *Colorado Interstate Gas Co.*, 348 U.S. 492, 497 (1955). But contrary to petitioner's assertions (Pet. 14-16), its state law claim had no purpose other than to obtain such relief.

On the record presented, petitioner's state declaratory judgment action sought to subject Williams' use of the FERC-approved pipeline to the state law franchise requirement and thus necessarily to prevent Williams from operating the pipeline under the express terms of the FERC certificate. Indeed, petitioner's state law action sought to enjoin implementation of the FERC certificate by subjecting Williams' proposed pipeline to an additional state law requirement. Accordingly, the distinction petitioner draws (Pet. 16) between "the *validity* or *lawfulness* of the FERC certificate," which it concedes for purposes of this case, and "the *legal* effect" of that certificate, is illusory. Petitioner's state law action sought the functional equivalent of the relief available exclusively from federal court review of FERC orders under the "clear and straightforward" (Pet. 14) provisions of Section 19(b). Thus, the court of appeals correctly concluded that petitioner's state law action constituted an

impermissible end run around the exclusive review provisions of Section 19(b) of the NGA.

b. This Court's decision in *City of Tacoma* v. *Taxpayers of Tacoma, supra*, confirms the validity of the court of appeals' determination. There, the Federal Power Commission, over the State of Washington's objection, issued a power plant license to the City of Tacoma. On the State's petition for review under the exclusive review provisions of Section 313(b) of the Federal Power Act, 16 U.S.C. 825*l*(b)—the predecessor to Section 19(b) of the NGA—the court of appeals upheld the license. Thereafter, the Washington state courts held that state law precluded the City from condemning property to build the plant—an issue that had been raised in the FPC review proceeding—and accordingly enjoined the City and its licensee from proceeding under the FPC license. 357 U.S. at 325-333, 338-339. This Court reversed that judgment, concluding that since Section 313(b) of the Federal Power Act "prescribed the specific, complete, and exclusive mode of review of the Commission's order," the provision "necessarily precluded *de novo* litigation between the parties of all issues inhering in the controversy, and all other means of judicial review." 357 U.S. at 375-376. See also *FCC* v. *ITT World Communications, Inc.*, 466 U.S. 463, 468 (1984); *Whitney Nat'l Bank* v. *Bank of New Orleans & Trust Co.*, 379 U.S. 411, 419-426 (1965).

Despite petitioner's claims to the contrary (Pet. 20-21), the rationale of *City of Tacoma* applies to the circumstances of this case. First, the Court's holding does not rest narrowly on principles of "*issue* preclusion," as opposed to "*claim* preclusion." Pet. 21. Though it could have chosen to resolve the case on that ground alone, the Court eschewed such an approach, stating that the requirement of "statutory finality" established by the FPC's exclusive review provisions "need not be labeled *res judicata*, estoppel, collateral estoppel, waiver or the like either by Congress or the courts." *City of Tacoma* v. *Taxpayers of Tacoma*, 357 U.S. at 336-337. Indeed, the Court

emphasized that its holding went not simply to the question of preclusion but to the *jurisdiction* of the state court:

> [E]ven if it might be thought that [the state law] issue was not raised in the Court of Appeals, it cannot be doubted that it could and should have been, for that was the court to which Congress had given "exclusive jurisdiction to affirm, modify, or set aside" the Commission's order. And the State may not reserve the point, for another round of piecemeal litigation, by remaining silent on the issue while its action to review and reverse the Commission's order was pending in that court—which had "exclusive jurisdiction" of the proceeding and whose judgment therein as declared by Congress "shall be final" * * *.

Id. at 339.

Thus, petitioner may not avoid the rationale of *City of Tacoma* by the pleading maneuver of not explicitly raising the state franchise law issue in the certificate proceeding before the Commission and in the petition for review under Section 19(b) in the D.C. Circuit. The sole purpose of asserting that issue is to block Williams' exercise of its rights to operate the pipeline under the FERC certificate. Thus, the issue is one that necessarily "inher[es] in the controversy" surrounding the validity of the certificate, and that "could and should have been [raised and litigated]" before the Commission and the court of appeals on the petition for review under Section 19(b). *City of Tacoma* v. *Taxpayers of Tacoma*, 357 U.S. at 336, 339.

Second, petitioner errs in asserting that this Court's conclusion in *City of Tacoma* is distinguishable because Section 9 of the Federal Power Act, 16 U.S.C. 802, which has no precise equivalent under the NGA, "requires the license applicant to give satisfactory evidence of compliance with applicable state law." Pet. 21. Section 9 cannot bear the weight petitioner would have it carry. As this Court has made plain:

> [Section 9] does not itself require compliance with any state laws. Its reference to state laws is by way of suggestion to the Federal Power Commission of subjects as to which the Commission may wish some proof submitted to it of the applicant's progress.

First Iowa Hydro-Elec. Cooperative v. *FPC*, 328 U.S. 152, 177-178 (1946); see *California* v. *FERC*, No. 89-333 (May 21, 1990), slip op. 8-9. Moreover, Section 9 did not account for the Court's holding in *City of Tacoma*. To the contrary, the Court rested its decision on the language of the exclusive judicial review provisions of Section 313(b) of the Federal Power Act, whose terms are, in all relevant aspects, identical to those in Section 19(b) of the NGA. See *Arkansas Louisiana Gas Co.* v. *Hall*, 453 U.S. 571, 577 n.7 (1981).[13]

c. Petitioner relies (Pet. 16-18) on several decisions in which federal regulatory statutes, including the NGA, were held, under the particular circumstances, not to preclude the exercise of state jurisdiction. But those decisions do not conflict with the decision below. Neither this

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[13] Contrary to petitioner's assertion, the decision below is not inconsistent with this Court's decisions resolving preemption questions raised outside the context of Section 19(b) review proceedings. See Pet. 18 (citing cases). None of those decisions involved the circumstances at issue here, namely, a collateral state law challenge effectively seeking to thwart the exercise of rights granted by a presumptively valid FERC certificate.

In *Michigan Consolidated Gas Co.* v. *Panhandle Eastern Pipe Line Co.*, 887 F.2d 1295 (6th Cir. 1989), cert. denied, 110 S. Ct. 1806 (1990) (cited at Pet. 19), the Sixth Circuit did resolve a collateral state law challenge to a FERC certificate that arose outside of the separate Section 19(b) review proceeding before another federal court of appeals. See 887 F.2d at 1298-1299. But in *Michigan Consolidated*, the FERC certificate holder first initiated federal proceedings to thwart any potential state law interference; the collateral challenge was then filed in response. See *id.* at 1298. Here, by contrast, petitioner filed its collateral state law challenge in state court in anticipation of Williams' receipt and use of the FERC certificate, and then proceeded to litigate the validity of that certificate in separate state and federal forums.

Court in *City of Tacoma* nor the court below suggested that state courts are deprived of all jurisdiction to consider any claim against a certificate holder relating to the authorized service. Rather, the problem in each case is to determine whether, in the circumstances presented, the true core of the state court action constitutes a challenge to the authority granted by the certificate. Here, as in *City of Tacoma*, it clearly did.

Thus, this case is distinguishable from *Central New England Ry.* v. *Boston & A.R.R.*, 279 U.S. 415 (1929). See Pet. 16. In *Central New England*, this Court held that a state law action in breach of contract for railroad service, after the railroad had received the Interstate Commerce Commission's approval for abandonment, was not "one to 'enjoin, set aside, annul or suspend' an order of the Commission of which the federal district courts are given exclusive jurisdiction." *Id.* at 420. As the Court explained:

> [R]espondent does not ask that the order be set aside or that it be regarded as illegal and void; it insists only that the order did not purport to deal with the contract between the carriers, and so cannot have the effect * * * of annulling the contract. The question is merely one of the legal effect of the order. Neither party contests its validity or asks that the carrier be compelled to do anything inconsistent with its terms.

Id. at 421.

Here, by contrast, petitioner's state law action sought to enjoin Williams from complying with the express terms of the FERC certificate, *i.e.*, to operate the pipeline. In other words, petitioner's state law action sought to accomplish precisely what this Court identified in *Central New England* as an impermissible collateral attack, namely, compelling the federal licensee to do something "inconsistent with the [terms]" of the federal agency order. 279 U.S. at 420; see, *e.g.*, *Lambert Run Coal Co.* v. *Baltimore & Ohio R.R.*, 258 U.S. 377, 381-382 (1922)

(suit to enjoin railroad from following ICC rules is the equivalent of a suit to stay an ICC order and thus must comply with exclusive statutory review provisions).[14]

d. Finally, petitioner mistakenly claims (Pet. 19-20) that the court of appeals' decision departs from the Commission's position advanced below. In the context of urging the court of appeals to overturn the state court injunction, the Commission did express its views on the merits of the preemption issue. As the Commission stated:

> [T]he state court injunction * * * constitutes an impermissible intrusion into the Commission's exclusive jurisdiction over the transportation of natural gas in interstate commerce under section 1(b) of the Natural Gas Act * * *, and, unless overturned, will unlawfully render unenforceable the Commission's orders exercising that jurisdiction.

Joint Br. in Opp. App. 40a.[15] But the Commission also argued that the state court injunction should be set aside because petitioner had "evade[d] [the] proper resolution of its concerns by an end run [around the Section 19(b)

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[14] For similar reasons, petitioner mistakenly relies (Pet. 17-18; Reply Br. 3 n.2) on *Pan American Petroleum Corp.* v. *Superior Court*, 366 U.S. 656 (1961). In that case, this Court held that the NGA did not preclude the state court from adjudicating "traditional common-law [contract] claims" involving the purchase of natural gas where "[n]o right is asserted under the Natural Gas Act." *Id.* at 663. And the Court made clear that the lawsuit did not involve any issue with respect to "the extent to which the Natural Gas Act reinforces or abrogates the private contract rights * * * in controversy." *Id.* at 664. Here, by contrast, petitioner's state court action plainly sought to prevent Williams from exercising its rights under the FERC certificate and thus, by its terms, sought to invalidate or modify that certificate issued exclusively under the NGA.

[15] Indeed, on petitioner's request for rehearing, the Commission had responded to the state court's injunctive order by stating categorically that "the state court's determination is erroneous. * * * [T]he Commission has exclusive jurisdiction over [Williams'] proposal." Pet. App. 65a n.5.

review proceeding] to an inappropriate state forum." *Id.* at 46a. The Commission made plain that petitioner's substantive

> argument is properly made in the U.S. Court of Appeals on a challenge to the Commission's orders as arbitrary, capricious, or otherwise constituting an abuse of discretion. * * * [Petitioner] has appealed the Commission's orders to the D.C. Circuit, and that court will, therefore, have occasion to adjudicate this policy question. The instant proceeding initiated in state court, however, instead invokes state jurisdictional authority which * * * has no basis in law.

Id. at 47a. The court of appeals' disposition of petitioner's collateral challenge was therefore consistent with the views espoused by the Commission.

2. In a brief and somewhat cryptic discussion (Pet. 22-27), petitioner attacks the court of appeals' decision on the grounds that the direction to the district court to enjoin enforcement of the state court decree conflicts with 28 U.S.C. 1738, with 28 U.S.C. 2283 (the Anti-Injunction Act), and with related doctrines. Although the court of appeals' largely unexplained ruling on this point does raise questions under these various statutes and doctrines, we believe that the decision below is consistent with governing law and that, in view of the unusual context of this case, that aspect of the court of appeals' judgment does not warrant further review.

a. Petitioner contends that the court of appeals' order violated 28 U.S.C. 1738, which requires federal courts to give state court judgments the same full faith and credit that state courts would give them. See *Marrese* v. *American Academy of Orthopaedic Surgeons*, 470 U.S. 373 (1985). But since the error in the state court's exercise of authority went to subject matter jurisdiction, it is far from clear that collateral attack would be precluded under state law. See Restatement (Second) of Judgments § 12 (1982). Moreover, a federal court is not required to give preclusive effect to a prior state court judgment where, as here, the state court judgment encroaches on exclusive

federal jurisdiction and does so in a manner inconsistent with a comprehensive statutory scheme designed by Congress to govern the subject matter at issue. See, *e.g.*, *Brown* v. *Felsen*, 442 U.S. 127, 134-139 (1979); *Kalb* v. *Feuerstein*, 308 U.S. 433, 438-444 (1940); see also Restatement (Second) of Judgments § 86 comment b (1982).[16]

b. Petitioner also raises the Anti-Injunction Act, 28 U.S.C. 2283, as an obstacle to the court of appeals' order. That Act provides:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

"Prevention of frequent federal court intervention," this Court has recognized, "forestalls 'the inevitable friction between the state and federal courts that ensues from the injunction of state judicial proceedings by a federal court.'" *Chick Kam Choo* v. *Exxon Corp.*, 486 U.S. 140, 146 (1988) (quoting *Vendo Co.* v. *Lektro-Vend Corp.*, 433 U.S. 623, 630-631 (1977) (plurality opinion)). Nevertheless, the express statutory exceptions to this principle "ensure the effectiveness and supremacy of federal law." *Chick Kam Choo*, 486 U.S. at 146.

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[16] Nor is the court of appeals' decision in conflict with the doctrine of *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals* v. *Feldman*, 460 U.S. 462 (1983). In those cases, the Court held that lower federal courts lack appellate jurisdiction to review state court determinations. The present federal suit, however, was not an action to obtain appellate review of a state court judgment. Rather, Williams filed its federal action to enforce its rights under the FERC certificate, as expressly provided in Section 7(h) of the NGA. In that context, the *Rooker-Feldman* doctrine does not preclude a collateral challenge to a state court judgment where that challenge is otherwise permissible. See the discussion in 18 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 4469, at 663-666 (1981).

Because the court of appeals issued its order without referring to the Anti-Injunction Act, the basis for its decision is not clear. But in our view, the order was warranted under Section 2283 because it was "necessary in aid of [the district court's] jurisdiction" over Williams' condemnation action under Section 7(h) of the NGA. The district court exercised jurisdiction to enforce Williams' right, as provided by the FERC certificate and Section 7(h), to condemn rights-of-way to use Oklahoma City's streets to build and operate the Commission-approved pipeline. The state court judgment interfered with the purpose of that condemnation—to operate the pipeline.[17] Thus, the injunction appears warranted in order to ensure full adjudication of Williams' Section 7(h) condemnation action.[18]

Moreover, the court of appeals, in remanding for issuance of an injunction, may be seen as acting on behalf of the D.C. Circuit, the court exercising exclusive jurisdic-

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[17] We note that the condemnation action had the attributes of an action in rem, and that "[m]ost courts have viewed the 'necessary in aid of jurisdiction' language [in Section 2283] as confirming the 'res' exception previously recognized in the federal courts." See P. Bator, D. Meltzer, P. Mishkin, & D. Shapiro, *Hart & Wechsler's The Federal Courts and the Federal System* 1327 (3d ed. 1988) [*Hart & Wechsler*].

[18] As petitioner points out (Reply Br. 5), the district court and Williams appear to have drawn a distinction between the cause of action under Section 7(h) for condemnation of property rights and Williams' claim that it is entitled to use the pipeline regardless of the state law franchise requirement. That distinction, however, appears to be unwarranted. Under Section 7(h), the district court has the express authority to grant Williams, as the FERC certificate holder, "the necessary right-of-way to construct, *operate*, and maintain a pipe line or pipe lines for the transportation of natural gas * * *." 15 U.S.C. 717f(h) (emphasis added).

Indeed, in the context of this statutorily authorized condemnation proceeding, the other exceptions to Section 2283—for "expressly authorized" injunctions and for injunctions "to protect or effectuate [the court's] judgments"—may also be relevant to the analysis. See generally *Hart & Wechsler*, *supra*, at 1324-1326, 1327-1328.

tion to review the merits of petitioner's challenge to Williams' FERC certificate. The D.C. Circuit, having exclusive jurisdiction under Section 19(b) to review the FERC certificate proceeding, would, in our view, have had authority in aid of that jurisdiction to enjoin the state court judgment. See *Capital Service, Inc.* v. *NLRB*, 347 U.S. 501 (1954). And the Tenth Circuit could have exercised that same authority had petitioner chosen to file its Section 19(b) petition in that court, which would have been a proper forum as the circuit "wherein the natural-gas company to which the order relates is located or has its principal place of business." 15 U.S.C. 717r(b).

c. Finally, and almost in passing (Pet. 24, 27), petitioner raises the question whether the court of appeals' order is consistent with the abstention doctrine articulated in *Younger* v. *Harris*, 401 U.S. 37 (1971), and later cases. The issue, once again, was not addressed by the court of appeals, but in our view, application of the *Younger* doctrine to this case would involve a substantial, and unwarranted, extension of existing law.

In general, the *Younger* doctrine has been applied to cases in which the state interest being protected is the interest in pursuing a state-initiated criminal (or, in some circumstances, civil) prosecution in a state forum. See *Huffman* v. *Pursue, Ltd.*, 420 U.S. 592, 603-605 (1975). In a few instances, the court has applied that doctrine in the context of private state court litigation when the issue involves a question critical to the state's system of administering justice in its courts. See, *e.g.*, *Juidice* v. *Vail*, 430 U.S. 327 (1977) (challenge to state contempt process); *Pennzoil Co.* v. *Texaco Inc.*, 481 U.S. 1 (1987) (challenge to state system for enforcing judgments). No such question is presented here. To the contrary, the question in this case involves a state's authority, in private litigation, to intrude into an area of paramount federal concern.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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